

### **REMARKS**

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks which follow.

As noted in the Office Action Summary, claims 54-98 are pending. Claims 54, 61-64, 66 and 73 are amended herein; claims 56-60, 65, 67, 72, 74 and 98 are canceled; and new claims 99-109 are added. Claim 61 is amended to appear in independent form. Basis for the amendments and for the new claims may be found throughout the specification and claims as-filed. Applicants reserve the right to file at least one continuation or divisional application directed to any subject matter canceled by way of the present Amendment. No new matter is presented by way of the present Amendment.

#### ***Rejections under 35 U.S.C. § 101***

Claims 54, 55, 61-64, 66, 68-71, 73 and 99-101 stand rejected under 35 U.S.C. § 101. The claims are amended to recite "purified" peptides, as suggested by the Examiner. Applicants request that this rejection be withdrawn.

#### ***Rejections under 35 U.S.C. §112, first paragraph***

Claims 66, 104 and 107-109 stand rejected under 35 U.S.C. § 112, first paragraph, as the specification purportedly fails to enable a peptide comprising SEQ ID NO:99, wherein SEQ ID NO:38 is excluded, where Cys may be replaced with Cys (Acm), an infant formula as a foodstuff comprising the peptide, and a method of treating inflammations by administering the peptide. Applicants note that as stated by the Office, the specification is enabling for a peptide comprising SEQ ID NO:99, wherein the peptide is SEQ ID NO:2-5, 8, 31-37, 47, 49, 51, 63, 65, 67, 70, 72-74, 80-83, 87-91, 93-95 or 97 and the cysteine is replaced by ace tamidomethyl-cysteine.

Thus, Applicants submit the specification must also enable peptides comprising SEQ ID NO:99, wherein the peptide is SEQ ID NO:92 and 96 (see claim 54), when the cysteine is replaced by acetamidomethyl-cysteine. To this end, claim

66 is amended to recite that the peptide is SEQ ID NO:2-5, 8, 31-37, 47, 49, 51, 63, 65, 67, 70, 72-74, 80-83, 87-91, 93-95 or 97. Claims 104 and 107-19 are canceled without prejudice or disclaimer. In light of the above, Applicants request that this rejection be withdrawn.

***Rejections Under 35 U.S.C. § 112, second paragraph***

Claims 61-64, 77-80, 99, 107 and 108 stand rejected as purportedly indefinite. Claim 61 is amended herein to clarify the peptide claimed, *i.e.*, SEQ ID NO:101 at the carboxy terminus of SEQ ID NO:70, 72-74, 80-83, 87-91, 93-95 or 97. Claim 62 is canceled herein (and new independent claim 110 is added). Claims 77-80 and 99, as well as claims 107 and 108, are canceled herein without prejudice or disclaimer. Applicants request these rejections be withdrawn.

In light of the above, Applicants respectfully request that the rejections pursuant to 35 U.S.C. § 112, second paragraph be withdrawn.

***Rejections under 35 U.S.C. § 102***

Claim 66 stands rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Shimazaki. To anticipate a claimed invention under §102, a reference must teach each and every element of the claimed invention. *See Lindeman Maschinenfabrik GmbH v. American Hoist and Derrick Company*, 221 USPQ 481, 485 (Fed. Cir. 1984). Tomita does not recite each element of the present invention.

Applicants submit that the full translation of Shimazaki, as provided by the Office, does not disclose each element of the present invention. As amended herein, claim 66 recites SEQ ID NOs. 2-5, 8, 31-37, 47, 49, 51, 63, 65, 67, 70, 72-74, 80-83, and 87-97. Shimazaki does not disclose these sequences. In light of the above, Applicants respectfully request that the rejections under 35 U.S.C. § 102 be withdrawn.

***Claim Objections***

Applicants note that claims 75, 76, 81-97, 102, 103, 105 and 106 are objected to as dependent on a rejected base claim and further note these claims would be allowable if rewritten as independent claims.

**CONCLUSION**

It is respectfully submitted that all rejections have been overcome by the above amendments. Thus, a Notice of Allowance is respectfully requested.

In the event that there are any questions relating to this amendment or the application in general, it would be appreciated if the Examiner would contact the undersigned attorney by telephone at (703) 836-6620 so that prosecution of the application may be expedited.

Respectfully submitted,

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